IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application No. 2931/2006 in Criminal Appeal No. 381/04.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **D.S. Zoting and A.P. Lavande,JJ**
DATE : 7th September, 2006

Heard Shri Daga, learned counsel for the applicant and Shri Sonak, learned A. P. P. for State.

2. The applicant has filed this application for suspension of sentence and for grant of bail under section 389 of the Code of Criminal Procedure. The applicant has been convicted and sentenced to undergo imprisonment for life for the offence punishable under section 302 of the Indian Penal Code. The appeal preferred by the applicant has been admitted. The conviction passed against the applicant is based on the circumstantial evidence. Mr. Daga, the learned counsel for the applicant submits that one of the circumstances relied upon by the prosecution i. e. extra judicial confession is rightly disbelieved by the trial Court but the trial Court erred in relying upon other circumstances to hold the applicant guilty of the offence. He further

submits that the prosecution failed to establish a chain of circumstances to prove the guilt of the accused. He further submits that the axe recovered in this matter was not sent to C. A.. He further points out that the alleged recovery of dead body in consequence of the information given by accused is not admissible as the Police Patil and the police knew the place where the dead body was buried. He further submits that in these circumstances pointed out as above, there is no sufficient evidence against the applicant and as such he may be released on bail.

3. As against this, Mr. Sonak, learned A. P. P. has submitted that the trial court has relied upon the following circumstances:-

i) last seen together;
ii) blood stains were found on the paijama of the applicant.
iii) The dead body was recovered at the instance of the accused from his field.

4. We have perused the judgment. The murdered woman was one Gayabai. We notice that the conviction is based on the circumstantial evidence. P.W. 4 Sk. Usman who is the

neighbouring cultivator stated that the applicant was living with deceased Gayabai in the hut situated in his field for 2-3 years prior to her death. It is to be noted that her son Arjun (P.W.6) stated that Gayabai did not visit his house for one and half month and, therefore, he inquired the applicant about her whereabouts. From his evidence, it is clear that the deceased was living with the applicant. It is to be noted that the dead body of Gayabai was recovered on 18.3.2003 from the field of the applicant. Police Patil lodged report and the accused was arrested. During the police custody of the accused, he made a statement that he would show the place where the dead body was buried and he led police and panchas to that place and he produced the dead body which was found buried. This is also a strong circumstance against the applicant/ accused. No doubt in the F. I. R. lodged by the Police Patil, it is mentioned that he received information that the dead body is buried in the field of the applicant; there is nothing to indicate that the Police Patil or the Police Officers were knowing the exact place in the four acres field of accused where the body was buried. It was within the exclusive knowledge of the applicant and as such the discovery under section 27 cannot be said to be inadmissible. Though it has come in the evidence

that the deceased was living with the applicant and though she was missing, he did not inform police or any other persons. Considering all these circumstances prima facie the trial court appears to be justified to convict the applicant on the basis of such evidence. Under the circumstances, we do not find it fit to suspend the sentence of the applicant and to grant him bail. The application is rejected.

Judge **Judge**

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